

1 PHILIP J. GREENE
 2 T98703/450-1-11U
 3 ASP-P.O. BOX 9
 4 AVENAL, CA. 93204
 5 PETITIONER,
 6 IN PROPER

FILED

7 FEB 11 PM 2:42

8 CLERK, U.S. DISTRICT COURT
 9 NORTHERN DISTRICT OF CALIFORNIA

10 IN THE UNITED STATES DISTRICT COURT,
 11 FOR THE NORTHERN DISTRICT OF CALIFORNIA.

12 PHILIP J. GREENE
 13 PETITIONER

14 CASE # 08-714 MMC

15 VS.
 16 HARTLEY - ASP WARDEN,
 17 RESPONDENT.

18 MOTION TO FILE NEWLY
 19 EXHAUSTED CLAIM VIA
 20 SECOND PETITION - ABUSE
 21 OF DISCRETION BY SENTENCING
 22 COURT.

23 NC
 24 COMES NOW, PHILIP J. GREENE, PETITIONER IN THE ABOVE TITLED
 25 ACTION, AND A CALIFORNIA PRISONER PROCEEDING PROPER, PETITIONS THIS COURT
 26 UPON MOTION TO FILE A NEWLY EXHAUSTED CLAIM VIA SECOND PETITION FOR WRIT OF
 27 HABEAS CORPUS, CHALLENGING AN ABUSE OF DISCRETION BY THE SENTENCING COURT
 28 AS CLAIMED AND ALLEGED WITHIN THE ENCLOSED PETITION FOR WRIT OF HABEAS
 CORPUS.

29 PETITIONER, FILED AN AMENDED PETITION FOR WRIT OF HABEAS CORPUS
 30 WITHIN THIS COURT ON JANUARY 22, 2007 IN CASE NUMBER C-05-3433 MMC (PR)
 31 CHALLENGING HIS CONVICTION ON THREE CLAIMS: 1) VIOLATION OF DUE PROCESS AND
32 SPEEDY TRIAL; 2) PROSECUTION VIOLATED DUE PROCESS BY KNOWINGLY SUPPRESSING
33 EXCULPATORY EVIDENCE; 3) VIOLATED DUE PROCESS BY PROSECUTING OUT OF VINDICTIVENESS.
 34 THIS PETITION AND ACTION IS CURRENTLY IN PROCESS; RESPONDENT IN THAT
 35 ACTION WAS ORDERED TO RESPOND - FILED IN AUGUST 2007 AND PETITIONER FILED HIS
 36 TRAVERSE IN SEPTEMBER 2007.

37 HOWEVER, THE ENCLOSED PETITION AND NEWLY EXHAUSTED CLAIM
 38 WAS FILED WITHIN THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
 39 ON MARCH 13, 2007, AFTER PETITIONER EXHAUSTED HIS ADMINISTRATIVE REMEDIES.
 40 THIS CLAIM HAS BEEN FULLY EXHAUSTED AT THE STATE LEVEL BASED ON THE CASE
 41 OF CUNNINGHAM V. CALIFORNIA, 127 S.C.T. 856 (2007) AND THE ISSUES DISCUSSED
 42 AND CONTAINED WITHIN THE PETITION AND ATTACHED EXHIBITS.

43 PURSUANT TO SINGLETON V. NORRIS, CA. 8 (ARK) 2003, 319 F.3d 1018 -
 44 HABEAS PETITION RAISING A CLAIM THAT HAD NOT BEEN ARisen AT THE TIME OF A
 45 PREVIOUS PETITION IS NOT BARRED BY RESTRICTIONS ON SECOND OR SUCCESSIVE

46 PLEASE STAMP FILED EA, PG,
 47 & RETURNS TO PETITIONER
 48 USING THE ENCLOSED STAMPED
 49 ENVELOPE. THANK YOU.
 50 PLEASE PROVIDE CASE#.

ORIGINAL FILED

JAN 30 2008

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAPETITION FOR A WRIT OF HABEAS CORPUS BY A PERSON IN STATEName GREENE PHILIP J.
(Last) (First) (Initial)Prisoner Number T98702 / 450-1-11UInstitutional Address ASP- P.O. BOX 9 AVENAL, CA. 93204**E-filing**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**MMC**PHILIP JASON GREENE

Full Name of Petitioner

CV 08 0714Case No. (To be provided by the
clerk of court)**(PR)**HARTLEY - ASP WARDEN, et al.

PETITION FOR A WRIT OF HABEAS CORPUS

Name of Respondent
(Warden or jailor)Read Comments Carefully Before Filling InWhen and Where to File

You should file in the Northern District if you were convicted and sentenced in one of these counties: Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Benito, Santa Clara, Santa Cruz, San Francisco, San Mateo and Sonoma. You should also file in this district if you are challenging the manner in which your sentence is being executed, such as loss of good time credits, and you are confined in one of these counties. Habeas L.R. 2254-3(a).

If you are challenging your conviction or sentence and you were not convicted and sentenced in one of the above-named fifteen counties, your petition will likely be transferred to the United States District Court for the district in which the state court that convicted and sentenced you is located. If you are challenging the execution of your sentence and you are not in prison in one of these counties, your

ORIGINAL
FILED

JAN 30 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PHILIP J. GREENE Plaintiff,

CV 08
CASE NO.

0714

v.
HARLEY ASP-WARDEN DefendantPRISONER'S
IN FORMA PAUPERIS
APPLICATIONMMC
(PR)

E-filing

I, PHILIP JASON GREENE, declare under penalty of perjury that I am the plaintiff in the above entitled case and that the information I offer throughout this application is true and correct. I offer this application in support of my request to proceed without being required to prepay the full amount of fees, costs or give security. I state that because of my poverty I am unable to pay the costs of this action or give security, and that I believe that I am entitled to relief.

In support of this application, I provide the following information:

1. Are you presently employed? Yes No

If your answer is "yes," state both your gross and net salary or wages per month, and give the name and address of your employer:

Gross: 0 Net: 0

Employer: N/A

If the answer is "no," state the date of last employment and the amount of the gross and net salary and wages per month which you received. (If you are imprisoned, specify the last place of employment prior to imprisonment.)

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2. Have you received, within the past twelve (12) months, any money from any of the following sources:

- a. Business, Profession or self employment Yes
- b. Income from stocks, bonds, or royalties? Yes

CV 08 0714 MMC

U.S. District Court Northern California

(PR)

ECF Registration Information Handout

The case you are participating in has been designated for this court's Electronic Case Filing (ECF) Program, pursuant to Civil Local Rule 5-4 and General Order 45. This means that you must (check off the boxes when done):

1) Serve this ECF Registration Information Handout on **all** parties in the case along with the complaint, or for removals, the removal notice. DO NOT serve the efiler application form, just this handout.

Each attorney representing a party must also:

2) Register to become an efiler by filling out the efiler application form. Follow ALL the instructions on the form carefully. If you are already registered in this district, do not register again, your registration is valid for life on all ECF cases in this district.

3) Email (do not efile) the complaint and, for removals, the removal notice and all attachments, in PDF format within ten business days, following the instructions below. You do not need to wait for your registration to be completed to email the court.

4) Access dockets and documents using **PACER** (Public Access to Court Electronic Records). If your firm already has a PACER account, please use that - it is not necessary to have an individual account. PACER registration is free. If you need to establish or check on an account, visit: <http://pacer.psc.uscourts.gov> or call **(800) 676-6856**.

BY SIGNING AND SUBMITTING TO THE COURT A REQUEST FOR AN ECF USER ID AND PASSWORD, YOU CONSENT TO ENTRY OF YOUR E-MAIL ADDRESS INTO THE COURT'S ELECTRONIC SERVICE REGISTRY FOR ELECTRONIC SERVICE ON YOU OF ALL E-FILED PAPERS, PURSUANT TO RULES 77 and 5(b)(2)(D) (eff. 12.1.01) OF THE FEDERAL RULES OF CIVIL PROCEDURE.

All subsequent papers submitted by attorneys in this case shall be filed electronically. Unrepresented litigants must file and serve in paper form, unless prior leave to file electronically is obtained from the assigned judge.

ECF registration forms, interactive tutorials and complete instructions for efilng may be found on the ECF website: <http://ecf.cand.uscourts.gov>

Submitting Initiating Documents

PDF versions of all the initiating documents originally submitted to the court (Complaint or Notice of Removal, exhibits, etc.) must be **emailed (not efiled)** to the **PDF email box for the presiding judge** (not the referring judge, if there is one) **within 10 (ten) business days** of the opening of your case. For a complete list of the email addresses, please go to: <http://ecf.cand.uscourts.gov> and click on **[Judges]**.

You must include the case number and judge's initials in the subject line of all relevant emails to the court. You do not need to wait for your registration to email these documents.

These documents must be emailed instead of e-filed to prevent duplicate entries in the ECF system. All other documents must be e-filed from then on. You do not need to efile or email the Civil Cover Sheet, Summons, or any documents issued by the court at case opening; note that you do need to efile the Summons Returned.

Converting Documents to PDF

Conversion of a word processing document to a PDF file is required before any documents may be submitted to the Court's electronic filing system.

Instructions for creating PDF files can be found at the ECF web site:

<http://ecf.cand.uscourts.gov>, and click on **[FAQ]**.

Email Guidelines: When sending an email to the court, the subject line of the email **must** contain the **case number, judge's initials** and the **type of document(s)** you are sending, and/or the topic of the email.

Examples: The examples below assume your case number is 03-09999 before the Honorable Charles R. Breyer:

Type of Document	Email Subject Line Text
Complaint Only	03-09999 CRB Complaint
Complaint and Notice of Related Case	03-09999 CRB Complaint, Related Case
Complaint and Motion for Temporary Restraining Order	03-09999 CRB Complaint, TRO

Questions

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<http://ecf.cand.uscourts.gov>, please check them first.

You may also email the ECF Help Desk at **ECFhelpdesk@cand.uscourts.gov** or
call the toll-free ECF Help Desk number at: (866) 638-7829.

The ECF Help Desk is staffed Mondays through Fridays from
9:00am to 4:00pm Pacific time, excluding court holidays.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
450 GOLDEN GATE AVE. 16TH FL.
SAN FRANCISCO, CA 94102



PHILIP J. GREENE
T98702/4cm

MCCF
P.O.BOX 1577
McFARLAND, CA 93250

NIXIE 913 4E 1 30 02/09/08

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REFUSED
UNABLE TO FORWARD

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